

REMARKS

Claims 1-3, 6-9 and 13 remain in the present application.

Claim 7 has been amended to more specifically define the fact that the tacked region at the end of the food strip is the only point at which the roll is tacked (antecedent basis for this amendment is found in the present application at page 4, lines 3-5 and 23-25, and in Fig. 5 where the tacking mechanism (prong) clearly only contacts and attaches a point in each of the top two layers of the roll).

The present invention relates to confectionery articles which comprise a strip of fruit or candy material formed into a roll, the end of the roll being tacked to the next adjacent inner layer of the roll through the application of heat or pressure to the outer layer. This tacked region serves as the point (i.e., the only point) at which the outer layer and the next inner layer of the roll are tacked together. The article provides a candy or snack item in a form which is viewed very positively by the consumer, particularly children. The method of forming these rolled food products is already covered in U.S. Patent 6,200,617, issued March 13, 2001.

The Examiner has rejected claims 7 and 8, under 35 U.S.C. § 102(b) as being anticipated by Lazarus (U.S. Patent 1,566,146). In light of the amendments made to claim 7 herein, that rejection is respectively traversed.

The Lazarus patent describes a basket made out of candy material. The bottom of the basket is formed by spiral winding a candy strip. The candy strip is wound while it is hot so that the candy is sticky, and (according to the patent) "the convolutions of the coil will stick to each other." While this does represent a roll of a candy material, by the terms of the Lazarus patent itself, adjacent layers of the roll are adhered together along the entire length of the strip. In sharp contrast, and as the Examiner admits in the Office Action, the present invention is not adhered along the entire length of the roll (i.e., such a structure would render the product very difficult to unroll and eat), but is only adhered at the end of the roll. This is clear from the way the present invention is made and the way the end of the roll is tacked. Since the Lazarus patent does not include this specific required limitation in the claims of the present invention, it cannot be an anticipation of the present claims. The Examiner has agreed with this interpretation of Lazarus in his discussion in the Office Action. Further, since the Lazarus patent does not provide any basis for forming a spiral of candy material which is anything other than tacked all the way along its entire length (and the bottom of the Lazarus basket would not function to hold the contents of the basket if it were not tacked all along its length), it would not have been obvious to form a candy

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spiral which is tacked only at its end. Accordingly, the Lazarus patent does not provide a basis for an obviousness rejection of claims 7 and 8 of the present application either.

The Examiner has also rejected claims 1, 2, 7 and 8 (as well as several dependent claims), under 35 U.S.C. § 103(a), as being unpatentable based upon Reynolds in view of Constable et al. and Solomon. This rejection is respectfully traversed for the reasons given below.

Reynolds teaches a method for making fruit leather. In this method, a sheet of fruit material is formed and dried, and is rolled up. However, as the Examiner points out, Reynolds is silent with regard to the formation of a tacked region on the trailing end of the fruit roll which serves as the sole point of attachment (as recited in claims 1 and 7 of the present application). The Examiner relies on Constable et al. and Solomon to support the proposition that "it is notoriously well known to have pressure formed points of attachments on any type of homemade food roll formed by a food sheet." It is respectfully submitted that Constable et al. and Solomon do not contain that sort of general teaching. Constable teaches a recipe for making cannoli wherein dough is formed into a tube, the seam of the dough is brushed with beaten egg white, and then two edges of the seam are pressed together to seal them. Cannoli, as is clear from the recipe, is a tube of fried dough which contains a filling made from ricotta cheese, sugar, liqueur, chocolate, candied fruit and nuts. It is necessary to press the dough seam together in the cannoli so that the dough tubes formed will hold the filling within them. Similarly, the Solomon reference teaches a recipe for making egg rolls wherein a filling made from pork, shrimp, Chinese cabbage, chestnuts, bean sprouts, scallions, soy sauce, oyster sauce, garlic and ginger are rolled in an egg roll wrapper and the edges of the wrapper dampened with water or a mixture of corn starch and water and pressed to seal the filling into the wrapper, prior to frying. Once again, in this recipe it is necessary to seal closed the wrapper in order for it to hold the filling inside it. In both the case of the cannoli and the egg roll if the edges of the roll are not sealed, the filling would not be adequately contained within the outer wrapper and the recipe would not work. In contrast, the fruit leather roll formed in Reynolds does not contain any filling at all. It is merely rolled up for storage. There is no reason at all for the edge of that roll to be sealed. There is certainly no reason for it to be sealed based on the teachings of Constable et al. and Solomon, since the fruit roll does not contain any filling within it that needs to be held in place. This conclusion is emphasized by the Kendall et al. reference which was also cited by the Examiner. This reference also teaches how to make fruit leather and it specifically states "after loosening the edge of the leather from the plastic wrap or pan, loosely roll the leather in plastic wrap or

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waxed paper... (emphasis added)." Thus, this reference suggests a loose rolling of the fruit leather, rather than one where there is a tacked edge. The teachings of Constable et al. and Solomon do not suggest to one skilled in the art that the edges of the Reynolds food roll should be tacked together. Further, the Kendall et al. reference (also cited by the Examiner) does not suggest that the edges of the Reynolds fruit leather should be tacked together. Accordingly, the present invention, as defined by claims 1 and 7 currently pending in the application, would not have been obvious based on the teachings of the references cited by the Examiner.

The invention claimed in the present application is simple, but that does not change the standards of patentability which must be applied to it. There is nothing in the references cited by the Examiner which either teaches or suggests the formation of a roll of fruit or candy material (not containing any filling) which is tacked at its end by heat or pressure, that point being the sole point of contact/adhesion for the roll.

In view of this, reconsideration and allowance of the claims of the present application are earnestly solicited. Applicants have made a good faith effort to try to address specifically the concerns raised by the Examiner in the Office Action. If the Examiner feels any further issues need to be addressed before allowing the present application, he is invited to call the Applicants' undersigned attorney at the phone number given below so that those issues can be worked out expeditiously and the application can be passed to allowance.

CERTIFICATE OF MAILING

I hereby certify that a copy of this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on

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Sarah Ohlweiler
Sarah Ohlweiler

Respectfully submitted,

David E. Babiarz et al.

By



Steven J. Goldstein
Registration No. 28,079
Attorney for Applicants

FROST BROWN TODD LLC
2200 PNC Center
201 East Fifth Street
Cincinnati, Ohio 45202
(513) 651-6131